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8  
9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

Case No. 4358

13 **ALEXIS A. CARRION**

**STATEMENT OF ISSUES**

14 **Pharmacy Technician Registration**  
15 **Applicant**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official  
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
22 2. On or about May 9, 2011, the Board of Pharmacy, Department of Consumer Affairs  
23 received an application for a Pharmacy Technician Registration from Alexis A. Carrion  
24 (Respondent). On or about April 25, 2011, Alexis A. Carrion certified under penalty of perjury to  
25 the truthfulness of all statements, answers, and representations in the application. The Board  
26 denied the application on April 16, 2012.

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## JURISDICTION

3. This Statement of Issues is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 4300, subdivision (c) of the Code states, in pertinent part, that the Board may refuse a license to any applicant guilty of unprofessional conduct. The Board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure.

## STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 477 of the Code states:

As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

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1           7.    Section 480 of the Code states:

2           (a) A board may deny a license regulated by this code on the grounds that the  
3           applicant has one of the following:

4           (1) Been convicted of a crime. A conviction within the meaning of this  
5           section means a plea or verdict of guilty or a conviction following a plea of nolo  
6           contendere. Any action that a board is permitted to take following the establishment  
7           of a conviction may be taken when the time for appeal has elapsed, or the judgment  
8           of conviction has been affirmed on appeal, or when an order granting probation is  
9           made suspending the imposition of sentence, irrespective of a subsequent order under  
10          the provisions of Section 1203.4 of the Penal Code.

11          (2) Done any act involving dishonesty, fraud, or deceit with the intent to  
12          substantially benefit himself or herself or another, or substantially injure another.

13          (3)(A) Done any act that if done by a licentiate of the business or profession  
14          in question, would be grounds for suspension or revocation of license.

15          (B) The board may deny a license pursuant to this subdivision only if the  
16          crime or act is substantially related to the qualifications, functions, or duties of the  
17          business or profession for which application is made.

18          (b) Notwithstanding any other provision of this code, no person shall be denied  
19          a license solely on the basis that he or she has been convicted of a felony if he or she  
20          has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with  
21          Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been  
22          convicted of a misdemeanor if he or she has met all applicable requirements of the  
23          criteria of rehabilitation developed by the board to evaluate the rehabilitation of a  
24          person when considering the denial of a license under subdivision (a) of Section 482.

25          (c) A board may deny a license regulated by this code on the ground that the  
26          applicant knowingly made a false statement of fact required to be revealed in the  
27          application for the license.

28           8.    Section 482 of the Code states:

          Each board under the provisions of this code shall develop criteria to evaluate  
          the rehabilitation of a person when:

          (a) Considering the denial of a license by the board under Section 480; or

          (b) Considering suspension or revocation of a license under Section 490.

          Each board shall take into account all competent evidence of rehabilitation  
          furnished by the applicant or licensee.

          9.    Section 492 of the Code states:

          Notwithstanding any other provision of law, successful completion of any  
          diversion program under the Penal Code, or successful completion of an alcohol and  
          drug problem assessment program under Article 5 (commencing with section  
          23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any  
          agency established under Division 2 ([Healing Arts] commencing with Section 500)

1 of this code, or any initiative act referred to in that division, from taking disciplinary  
2 action against a licensee or from denying a license for professional misconduct,  
3 notwithstanding that evidence of that misconduct may be recorded in a record  
4 pertaining to an arrest.

5 This section shall not be construed to apply to any drug diversion program  
6 operated by any agency established under Division 2 (commencing with Section 500)  
7 of this code, or any initiative act referred to in that division.

8 10. Section 4301 of the Code states:

9 The board shall take action against any holder of a license who is guilty of  
10 unprofessional conduct or whose license has been procured by fraud or  
11 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is  
12 not limited to, any of the following:

13 . . . .

14 (h) The administering to oneself, of any controlled substance, or the use of any  
15 dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
16 dangerous or injurious to oneself, to a person holding a license under this chapter, or  
17 to any other person or to the public, or to the extent that the use impairs the ability of  
18 the person to conduct with safety to the public the practice authorized by the license.

19 . . . .

## 20 REGULATORY PROVISIONS

21 11. California Code of Regulations, title 16, section 1768 states:

22 (a) Where the board has denied an application for a license, the earliest date on  
23 which the applicant may reapply for a license is one year after the effective date of  
24 the denial.

25 (b) All competent evidence of rehabilitation presented will be considered upon  
26 a reapplication. The board shall use the criteria listed in section 1769 when  
27 considering evidence of rehabilitation.

28 12. California Code of Regulations, title 16, section 1769 states:

(a) When considering the denial of a facility or personal license under Section  
480 of the Business and Professions Code, the board, in evaluating the rehabilitation  
of the applicant and his present eligibility for licensing or registration, will consider  
the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration  
as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)  
under consideration as grounds for denial under Section 480 of the Business and  
Professions Code.

1 (3) The time that has elapsed since commission of the act(s) or crime(s)  
2 referred to in subdivision (1) or (2).

3 (4) Whether the applicant has complied with any terms of parole,  
4 probation, restitution or any other sanctions lawfully imposed against the applicant.

5 (5) Evidence, if any, of rehabilitation submitted by the applicant.

6 13. California Code of Regulations, title 16, section 1770 states:

7 For the purpose of denial, suspension, or revocation of a personal or facility  
8 license pursuant to Division 1.5 (commencing with Section 475) of the Business and  
9 Professions Code, a crime or act shall be considered substantially related to the  
10 qualifications, functions or duties of a licensee or registrant if to a substantial degree  
it evidences present or potential unfitness of a licensee or registrant to perform the  
functions authorized by his license or registration in a manner consistent with the  
public health, safety, or welfare.

#### 11 DRUG

12 14. Methamphetamine is a Schedule II controlled substance as designated by Health  
13 and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business  
14 and Professions Code section 4022.

#### 15 CAUSE FOR DENIAL OF APPLICATION

##### 16 (Under the Influence of a Controlled Substance on March 20, 2006)

17 15. Respondent's application for registration as a pharmacy technician is subject to denial  
18 under sections 480, subdivision (a)(3)(A) of the Code in that Respondent was under the influence  
19 of the controlled substance methamphetamine on March 20, 2006. Said conduct would be a  
20 ground for discipline under section 4301, subdivision (h) of the Code for a licensed pharmacy  
21 technician. The circumstances are as follows:

22 a. On or about 1:30 in the morning of March 20, 2006, patrol officers with the  
23 Chula Vista Police Department responded to a park regarding suspicious activity. Upon arrival,  
24 an officer heard the sound of breaking glass, and he found a broken methamphetamine pipe and a  
25 sock containing controlled substance paraphernalia near a vehicle with several young adults  
26 nearby, including Respondent. The officer examined Respondent and found that his pupils were  
27 slow to react to light, his tongue had a white, filmy coating, and his pulse was 133 beats per  
28 minute. Respondent admitted to the officer that he had just smoked methamphetamine.

1 Respondent told the officer that he met with friends with the intention of going to the park and  
2 smoking methamphetamine. Respondent provided the drug and the paraphernalia to his friends;  
3 the police showed up before his friends had a chance to smoke. Respondent was arrested for  
4 being under the influence of methamphetamine.

5 b. As a result of the arrest, on or about June 12, 2006, in a criminal proceeding  
6 entitled *People of the State of California vs. Alexis Amadeo Carrion*, in San Diego County  
7 Superior Court, case number S202615, Respondent pled no contest to violating Health and Safety  
8 Code section 11550, subdivision (a), under the influence of a controlled substance, to wit,  
9 methamphetamine, a misdemeanor.

10 c. As a result of the plea, on or about June 6, 2006, the court deferred entry of  
11 judgment for 18 months. Respondent satisfactorily completed the court's diversion program.  
12 Respondent's plea was set aside and the charges were dismissed pursuant to Penal Code section  
13 1000.

#### 14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Board of Pharmacy issue a decision:

- 17 1. Denying the application of Alexis A. Carrion for a Pharmacy Technician  
18 Registration;  
19 2. Taking such other and further action as deemed necessary and proper.

20  
21 DATED: 8/14/12

  
22 VIRGINIA HEROLD

23 Executive Officer  
24 Board of Pharmacy  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant  
28

SD2012703769